

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 555 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

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G S R T C

Versus

KV PARMAR

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Appearance:

MR. N.V.ANJARIA on behalf of MR SN SHELAT for Petitioner  
MR DA BAMBHANIA for Respondent No. 1  
Respondent No. 2 is served.

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 11/04/97

ORAL JUDGEMENT

This petition under Article 227 of the Constitution is directed against the order dated 4-6-1992 passed by the Conciliation Officer and Asst. Commissioner of Labour, Panchamahals at Godhara (the second respondent) in Application No.ID/VA/28/92 under the provisions of Section 33 (2)(b) of the Industrial

Disputes Act, 1947 (hereinafter referred to as the Act).

2. The First respondent (hereinafter referred to as the respondent or workman) was employed as a conductor by the Gujarat State Road Transport Corporation (hereinafter referred to as the Corporation). The Corporation held departmental inquiry against the workman on the charge that the workman had collected fare from the passengers but had not issued the tickets in their favour and that he was guilty of misappropriation of public fund and dereliction of duty. Pursuant to the said departmental inquiry, the workman was ordered to be dismissed from service as per the order dated May 13, 1992. On that day the Corporation preferred an application before the second Respondent for approval of the action as per the dismissal order. The workman was paid Rs.1292/- as basic pay, Rs.775/D.A., Rs.50/H.R.A., aggregating to a sum of Rs.2127/- being the amount of one month's wages.

3. The aforesaid application came to be contested by the workman. One of the defences raised by the workman was that he was required to be paid D.A. at Rs.775/20 ps. and there was short payment of 20 paise. Since the workman was not paid the full amount of wages for one month the action was not in accordance with the provisions of Section 33 (2)(b) of the Act. There was no dispute about the fact that the total amount of Rs.2127/- was paid on the date of dismissal i.e. on May 13, 1992. The respondent workman also raised defences on merits of the matter.

4. After hearing both the parties, the second respondent rejected the approval application on the ground that the petitioner Corporation had not made payment of full amount of Rs.2127-20 ps. The second respondent did not go into the merits of the approval application and rejected it as per the impugned order dated June 4, 1992 which is at annexure 'B' to the petition.

5. Mr. Anjaria, learned advocate appearing for the petitioner Corporation has submitted that the total amount required to be paid was Rs.2127-20 ps. and as per the normal practice the amount was rounded off to Rs.2127-00. He has therefore submitted that the view taken by the second respondent was hyper technical and has relied on the principle enunciated by this Court in the case of Shantilal H. Surati Vs. G.S.R.T.C., reported in 1996(2) G.L.R. 828.

6. In the case of Shantilal (supra) this Court has

held that the provisions of Section 33(2)(b) of the Industrial Disputes Act have to be construed reasonably, as the intention of the Legislature in providing payment of one month's wage at time of dismissal or termination is to soften the rigour of unemployment that will face the workman against whom the order of discharge or dismissal is passed. In the aforesaid case of Shanilal (supra) this Court took the view that payment of wages for 30 days was sufficient compliance with the provisions of Section 33(2) (b) of the Act notwithstanding that there were 31 days in that particular month.

7. In the instant case also the same rationale is applicable. Rounding off an amount to the nearest rupee is a reasonable common practice. For rounding off the amount of one month's wages one had to ignore the sum of 20 paise out of the total amount of Rs.2127-20 ps. It did not amount to breach of condition imposed by the provisions of Section 33(2)(b) of the Act in so far as they require the employer to make payment of wages of one month to the workman.

8. In view of the above discussion, the contention urged on behalf of the the petitioner - Corporation deserves to be accepted. The impugned order passed by the second respondent deserves to be set aside as the action of rounding off the amount of wages for one month cannot be said to be illegal or arbitrary.

9. In the result, the petition is allowed. The impugned order dated June 6, 1992 is set aside. Since the second respondent did not give any finding on merits of the case, the matter is required to be remanded to the second respondent with a direction to dispose of the approval application within a period of three months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

10. There shall be no order as to costs.